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January 10, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20036

RE: In the Matter of Amendment of Parts 32 and 64 of the Commission's Rules to account  
for Transactions Between Carriers and Their Nonregulated Affiliates, CC Docket No.  
93-251

Dear Mr. Caton:

Attached are the original and four copies of the Reply Comments of Sprint Corporation  
in the matter referenced above.

Sincerely,

Jay C. Keithley  
Vice President  
Law and External Affairs

Attachment

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of )  
 )  
Amendment of Parts 32 and 64 )  
of the Commission's Rules to )  
Account for Transactions )  
Between Carriers and Their )  
Nonregulated Affiliates )

CC Docket No. 93-251

**REPLY COMMENTS OF SPRINT CORPORATION**

Sprint Corporation ("Sprint") on behalf of the United and Central Telephone companies, North Supply Company, and Sprint/United Management Company ("SUMC"), respectfully replies to the comments filed in response to the Commission's NPRM in the above referenced proceeding.<sup>1</sup>

**I. INTRODUCTION**

In the NPRM the Commission proposed, inter alia, elimination of "prevailing company price" unless the nonregulated affiliate met a "bright line" test of 75% of its business from nonaffiliates. Additionally, the Commission proposed the extension of the asymmetrical asset transfer rule to transfers of service such that a service transfer by an affiliate to a LEC would be at the lower of estimated fair market value ("EFMV") or

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1. Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions between Carriers and their Non-regulated Affiliates, Notice of Proposed Rulemaking, CC Docket No. 93-251, released October 20, 1993 ("NPRM").

fully distributed cost and a service transfer by a LEC to an affiliate would be at the higher of EFMV or fully distributed cost.

Sprint argued in its Comments that the Commission neither cited any failures of the current system<sup>2</sup> nor showed that the ratepayer has suffered any harm by compliance with current rules and regulations.<sup>3</sup> Sprint asserted that without such a showing it is arbitrary and unreasonable to change the affiliate transactions standard from one where a transaction is inappropriate if it causes harm to a standard where benefit to the regulated entity must be shown before an affiliate transaction is condoned. Accordingly, Sprint argued that the proposed rules changes are unnecessary, unwarranted, and unreasonable.

**II. THE RECORD IS DEVOID OF ANY SUBSTANTITIVE EVIDENCE THAT THE PROPOSED CHANGES ARE WARRANTED OR NECESSARY TO PROTECT THE PUBLIC INTEREST**

The Comments failed to provide the showing necessary to

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2. The current system of safeguards against cross-subsidization was documented in the Comments of Southwestern Bell Telephone Company ("SWBT") at pp. 4-5. As SWBT delineates therein, existing safeguards include accounting rules and cost allocation standards; quarterly CAM filings; CAM uniformity rules; external audit standards, requirements and spreadsheets; detailed automated reporting requirements; and on-site audits by the FCC staff.

3. Even the International Communications Association ("ICA"), one of the few proponents of the Commission's proposals, noted the lack of any record evidence to justify any change in the existing rules. See Comments of ICA at pp. 5-9.

support any changes to the current system. There is still nothing on the record in this proceeding that proves, demonstrates, or even suggests that the Commission's proposals are warranted or necessary or of benefit to the public interest. Only five commenting parties supported the Commission's proposals.<sup>4</sup> For the most part these comments merely reiterated the Commission's assertions that the changes are necessary, but did not provide any evidence or support for the claim. MCI attempted to present substantive arguments, however these arguments are without merit.

For instance, MCI refers to the recent GAO Report as supportive of the Commission's proposals.<sup>5</sup> To the contrary, the GAO Report offers absolutely no independent support or evidentiary basis for the Commission's proposals. The GAO Report does not criticize the existing affiliate transaction rules, nor recommend that changes to the existing affiliate transaction rules be made. Rather, the focus of the GAO Report was on Commission staffing. Thus the GAO Report does not support the Commission's proposals.

The GAO Report however does demonstrate that the adoption of price caps has eliminated the incentives for LECs to engage in cross-subsidization activities. The GAO Report states:

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4. See Comments of MCI Telecommunications Corporation ("MCI"), ICA, Information Technology Association of America ("ITAA"), Tennessee Public Service Commission ("Tennessee"), and Public Utility Commission of Texas ("Texas").

5. MCI at p. 2 citing the Telephone Cross-Subsidy,

In addition to the accounting safeguards mentioned above, FCC believes that its price cap regulation removes the underlying incentive for the carriers to cross-subsidize. . . .

FCC officials told us that it is too early to evaluate price caps for the LECs, because the price cap regulation was not implemented until 1991. Thus, we have not considered this regulation in our discussion of FCC oversight.<sup>6</sup>

Thus, the FCC itself told the GAO that price cap regulation solves cross-subsidization problems. The FCC also stated that it was too early for the GAO to fairly evaluate the full effects of price caps. Yet, in this proceeding, without any clear causation or precedent, the FCC does a complete about face and proposes unjustified rules that the FCC itself has recently told the GAO were unnecessary and unwarranted.

### **III. THE "BRIGHT LINE" TEST IS ARBITRARY AND INSUPPORTABLE**

No party to this proceeding introduced any evidence that 75% was the correct percent or even a reasonable percent. Indeed, even MCI admitted that "any level selected necessarily will be somewhat arbitrary."<sup>7</sup>

Rather, all of the evidence submitted on the record is consistent with the position of Sprint that imposition of any numerical level that must be reached before sales to outsiders

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(Footnote 5 continued from previous page)  
GAO/RCED-93-34, Released February 3, 1993 ("GAO Report").

6. GAO Report at p. 27.

7. MCI at p. 5.

represent a market based, reasonable price is an arbitrary act and insupportable by the Commission.<sup>8</sup> The fact that sales are made to affiliates at the same price as to nonaffiliates ensures that competitive market based results are achieved and the prevailing company pricing methodology should continue to be made available in such circumstances. As long as nonaffiliate sales occur, competitive market based results are achieved. Accordingly, Sprint views, and the record demonstrates, that a "bright line" test is totally arbitrary and completely unwarranted.

#### **IV. SPRINT STRENUOUSLY OPPOSES THE CREATION OF AN ESTIMATED FAIR MARKET VALUE ("EFMV") TEST FOR SERVICE TRANSFERS**

In its comments Sprint argued that the establishment of EFMV for services is highly unreliable, open to significant dispute, and, because of its subjectivity, will provide no dependable information to the Commission.

Additionally, Coopers & Lybrand quite correctly points out that application of an EFMV test to services "will add . . . complexity and subjectivity to the audit process thereby

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8. See Comments of Sprint at Attachment 2, An Assessment of the FCC Notice of Proposed Rulemaking on the Affiliate Relationships of Sprint North Supply Company, by Gregory L. Mann, Ph.D.,

diminishing the enforcement mechanism that the FCC currently has in place."<sup>9</sup> Given the concerns expressed in the GAO Report regarding the lack of Commission audit staff to perform on-site audits, it is difficult, indeed impossible, to see how this proposal will accomplish anything but the further over burdening of the Commission's audit tasks.

Finally, Sprint agrees with Bell Atlantic that it is unlikely that the Commission's proposal to apply EFMV to services can be sustained. As Bell Atlantic notes, the D.C. Circuit Court of Appeals only approved of the asymmetrical asset transfer rule for extremely limited use.<sup>10</sup> It is inconceivable that the Court would have approved of the use of such a test in all circumstances where there is no tariff or prevailing company price (especially given the Commission's proposed restrictions on the use of prevailing company price) as proposed by the Commission.

#### **V. CONCLUSION**

Nothing in the record refutes Sprint's arguments that the existing affiliate transaction rules have satisfactorily demonstrated in the past their ability to protect against cross-subsidization and will continue to do so in the future.

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9. See, Comments of Coopers & Lybrand at p. 1.

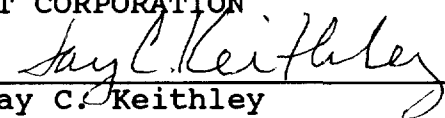
10. See, Comments of the Bell Atlantic Telephone Companies ("Bell Atlantic") at footnote 10, p. 9 citing Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

The Commission's proposed changes are unwarranted, unnecessary,  
and unreasonable and should not be adopted.

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January 10, 1994



## **CERTIFICATE OF SERVICE**

I, Melinda L. Mills, hereby certify that I have on this 10th day of January, 1994, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply Comments of Sprint Corporation" in the Matter of Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, CC Docket No. 93-251, filed this date with the Acting Secretary, Federal Communications Commission, to the persons listed on the attached service list.

  
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